

PROGRESS PAYMENTS BASED ON MILESTONES

- (a) Milestone payments shall be made to the Contractor, when requested, in the amounts and at the frequencies stated in this contract. The Laboratory's authorization of milestone payments is subject to the Contractor's satisfactory performance, and the Laboratory may suspend or reduce milestone payments after finding evidence of the following:
 - (1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (d) and (e) below);
 - (2) Performance of this contract is endangered by:
 - (i) The Contractor's failure to make progress; or
 - (ii) The Contractor's unsatisfactory financial condition.
 - (3) The Contractor is delinquent in payment of the costs of performing this Contract in the ordinary course of business; or
 - (4) The unliquidated milestone payments exceed the fair value of the work accomplished on the undelivered portion of this contract.
- (b) Title
 - (1) Title to the property described in this paragraph (b) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.
 - (2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:
 - (i) Parts, materials, inventories and work in process;
 - (ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;
 - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

- (iv) Drawings and technical data to the extent the Contractor or subcontractors are required to deliver them to the Laboratory by other clauses of this contract.
- (3) Although title to property is in the Government under this clause, other applicable clauses of this contract; e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.
- (4) The terms of this contract concerning liability for Laboratory or Government furnished property shall not apply to property to which the Government acquired title solely under this clause.

(c) Risk of Loss

Before delivery to and acceptance by the Laboratory, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause. The Contractor shall repay the Laboratory an amount equal to the unliquidated progress payments that are based on costs allocable to the property that is damaged, lost, stolen, or destroyed.

(d) Control of Costs and Property

The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(e) Reports and Access to Records

The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Authorized Laboratory Procurement Official for the administration of this clause. Also, the Contractor shall give the Laboratory reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(f) Special Terms Regarding Default

If this contract is terminated under the Default clause,

- (1) The Contractor shall, on demand, repay to the Laboratory the amount of unliquidated milestone payments; and
- (2) Title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Laboratory elects not to require delivery under the Default clause. The Laboratory shall be liable for no payment except as provided by the Default clause.

(g) Reservation of Rights

(1) No payment or vesting of title under this clause shall:

- (i) Excuse the Contractor from performance of obligations under this contract;
or
- (ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Laboratory's rights and remedies under this clause:

- (i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and
- (ii) Shall not be affected by delayed, partial or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power or privilege of the Laboratory.

(h) Terms substantially similar to paragraphs (a) through (g) of this clause and at least as favorable to the Laboratory and the Government as the terms of this clause shall be incorporated in subcontracts under this contract when property is chargeable to milestone payments identified in this contract.